

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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UNITED STATES OF AMERICA : CRIMINAL NO. 11-576-1
:
v. : Philadelphia, Pennsylvania
: July 10, 2012
THOMAS ALFRED LEES : 11:00 o'clock a.m.
.

CHANGE OF PLEA HEARING
BEFORE THE HONORABLE TIMOTHY R. RICE
UNITED STATES MAGISTRATE JUDGE

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APPEARANCES:

For the Government: MEREDITH TAYLOR, ESQUIRE
U.S. Attorney's Office
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For the Defendant: MICHAEL J. McGOVERN, ESQUIRE
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1 (The following occurred in open court at 11:00
2 o'clock a.m.:)

3 THE COURT: Mr. McGovern, how are you?

4 MR. McGOVERN: Judge Rice, nice to see you, sir.

5 THE COURT: Good to see you again. Please be
6 seated.

7 MR. McGOVERN: Can I have my client approach, your
8 Honor?

9 THE COURT: Oh, of course, of course.

10 Mr. Lees, how are you?

11 THE DEFENDANT: Fine. And yourself?

12 THE COURT: Good. You can have a seat, sir.

13 THE DEFENDANT: Thank you, Judge.

14 THE COURT: Ms. Taylor, good morning.

15 MS. TAYLOR: Good morning, your Honor.

16 MR. McGOVERN: Your Honor, I -- I just want to be
17 clear, I had been in conversations with Ashley Lunkenheimer
18 and also your staff -- Ms. Chavela?

19 THE DEPUTY CLERK: Yes.

20 MR. McGOVERN: Hi, nice to meet you in person.

21 THE COURT: Ms. Settles, yes.

22 MR. McGOVERN: It was our intention, your Honor, was
23 to enter the change of plea and we intended to file a motion
24 to proceed under Section 3607 on the special probation.

25 THE COURT: Mm-hmm.

1 MR. McGOVERN: And I was not available for tomorrow,
2 which I was trying to coordinate a date when I would be
3 available. So I just wanted to alert the Court to --

4 THE COURT: Yeah, here's -- I talked to the
5 Government today, here's what they're going to do. They're
6 going to present testimony tomorrow, general -- the general
7 situation at Boeing. And then at the sentencing for the
8 defendants who are not there they're going to present
9 testimony unique to that defendant before the sentencing,
10 because apparently everybody couldn't come, but they don't
11 want to have to present all these people from Boeing to
12 testify of what goes on at the facility for every sentencing.
13 So that's the only thing I think with respect to Mr. Lees is
14 going to happen tomorrow.

15 MR. McGOVERN: Okay.

16 THE COURT: So I don't know if you can get somebody
17 to attend or get somebody to --

18 MR. McGOVERN: Well, I'm the only one in my firm
19 that practices criminal law.

20 THE COURT: That's a problem.

21 MR. McGOVERN: Yeah, I wish there were more.

22 THE COURT: Well, you can review the transcript --

23 MR. McGOVERN: Okay.

24 THE COURT: -- I guess, and then if there's an issue
25 that you want to contest, we can deal with that at

1 sentencing, you can let Ms. Lunkenheimer know.

2 MR. McGOVERN: It would be unlikely, but I
3 appreciate that opportunity, Judge.

4 THE COURT: Sure, sure. No, I don't want anything
5 to happen that would jeopardize your client's position.

6 MR. McGOVERN: Thank you, your Honor.

7 THE COURT: All right, very well.

8 MR. McGOVERN: May I be seated, Judge?

9 THE COURT: Oh, yeah, of course --

10 MR. McGOVERN: Thank you.

11 THE COURT: -- of course. Our court reporter is
12 Christina. Could you swear Mr. Lees, please?

13 THE AUDIO OPERATOR: Please remain standing and
14 raise your right hand.

15 THOMAS ALFRED LEES, Sworn.

16 THE AUDIO OPERATOR: Thank you. You may be seated.

17 THE DEFENDANT: Thanks.

18 THE COURT: All right, Mr. Lees, you're now under
19 oath, any answer you give has to be truthful or it could be
20 used against you in a prosecution for a perjury or making a
21 false statement. All right?

22 I know you're probably a little nervous today, so
23 let me explain to you what's going to happen. I'm just going
24 to ask you a bunch of questions to determine if you
25 understand what you're doing today, you understand the nature

1 of the proceeding and the rights you're giving up and the
2 consequences of that. All right? So some of the questions
3 might seem a little strange to you, but I have to determine,
4 A, that you're competent, and I have to determine also that
5 you understand the constitutional rights that you're giving
6 up and what impact it will have on your life. Okay?

7 THE DEFENDANT: Yes.

8 THE COURT: All right. So all you have to do is
9 listen carefully. If you don't understand something, you can
10 ask to speak to Mr. McGovern, he's a very experienced lawyer,
11 and I'll give you time to do that. And if you need me to
12 repeat something or if I'm not clear, just say, you know, I
13 didn't understand that, could you say it again.

14 THE DEFENDANT: All right.

15 THE COURT: So nobody is here to rush you into
16 anything and I just want to make sure you have enough time to
17 think about it.

18 THE DEFENDANT: Okay, thank you.

19 THE COURT: Okay?

20 THE DEFENDANT: Mm-hmm.

21 THE COURT: All right. Could you just give me your
22 full name and your age?

23 THE DEFENDANT: Thomas Alfred Lees, Jr. --

24 THE COURT: Okay.

25 THE DEFENDANT: -- 52 years old.

1 THE COURT: All right. And can you read, write and
2 speak English?

3 THE DEFENDANT: Yes.

4 THE COURT: And how far did you go in school?

5 THE DEFENDANT: 12 years in the high school and now
6 I'm close to getting a BA in night school.

7 THE COURT: Oh, good, congratulations.

8 THE DEFENDANT: Thank you.

9 THE COURT: Where are you going?

10 THE DEFENDANT: Penn State, Delaware County campus.

11 THE COURT: Excellent, excellent.

12 Now, I know there's been some issues with drug
13 abuse, but could you talk to me about whether you've ever
14 been treated for drug, alcohol abuse, or any mental illness?

15 THE DEFENDANT: What was the last statement, Judge?

16 THE COURT: Mental illness.

17 THE DEFENDANT: No, sir.

18 THE COURT: Okay. How about drug or alcohol abuse?

19 THE DEFENDANT: No.

20 THE COURT: No treatment?

21 THE DEFENDANT: Nope.

22 THE COURT: Okay. Have you ingested any drugs or
23 alcohol within the last few days?

24 THE DEFENDANT: No, sir.

25 THE COURT: Okay.

1 THE DEFENDANT: Oh, I might have had a beer.

2 THE COURT: All right.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. But that doesn't -- you didn't
5 have any today?

6 THE DEFENDANT: No.

7 THE COURT: How about last night?

8 THE DEFENDANT: Last night, yesterday afternoon for
9 dinner, one beer.

10 THE COURT: Okay.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Excellent. But, generally, are you
13 feeling all right today?

14 THE DEFENDANT: I sure am.

15 THE COURT: Okay. And can you hear and understand
16 me okay?

17 THE DEFENDANT: Perfect.

18 THE COURT: All right. Now, has Mr. McGovern gone
19 over the charges against you and fully explained your trial
20 rights and any defenses you had to those?

21 THE DEFENDANT: Yes, he has.

22 THE COURT: Now, I know you haven't signed a plea
23 agreement, so you're just pleading guilty and there's been no
24 promises with the Government, is that correct?

25 THE DEFENDANT: Yes.

1 THE COURT: All right. Do you feel as though you've
2 had enough time with Mr. McGovern to talk over your decision
3 to plead guilty?

4 THE DEFENDANT: Yes.

5 THE COURT: And so far has he done everything that
6 you wanted him to do on your case?

7 THE DEFENDANT: Yes.

8 THE COURT: All right. Now, other than what we
9 discussed here today about your agreement to plead guilty,
10 has anybody made any promises to you about -- to get you to
11 plead guilty? Anybody try to induce you or promise you
12 things to get you to plead?

13 THE DEFENDANT: No.

14 THE COURT: Okay.

15 MR. McGOVERN: Your Honor, for the record, I have
16 explained our intention -- my intention to file a motion for
17 the Court to seek approval of special probation under Title
18 Section 3607 with regard to his case.

19 THE COURT: Okay.

20 MR. McGOVERN: And I also advised him that it was my
21 understanding the Government was going to oppose that motion,
22 but that would be a decision for the Court to make, and I
23 explained to him the strategy behind pursuing that
24 application.

25 THE COURT: Okay, very good. Do you understand

1 that, sir?

2 THE DEFENDANT: Yes.

3 THE COURT: All right. So you -- no one can
4 guarantee you how I'm going to rule on that, because I
5 haven't even read all the papers yet or heard the evidence.
6 So, if you're pleading guilty because you think you're
7 getting prejudgment probation, nobody can make you that
8 promise.

9 THE DEFENDANT: Right, I understand that.

10 THE COURT: So there's a chance that it might be
11 granted, there's a chance it might be denied, but neither Mr.
12 McGovern, Ms. Taylor nor myself can give you any idea of what
13 that decision is going to be.

14 THE DEFENDANT: At this time, right.

15 THE COURT: At this time, correct.

16 THE DEFENDANT: Yep.

17 THE COURT: Do you understand that no one can
18 guarantee you what sentence you're going to receive from me?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay. And did anyone use force,
21 violence or threats to get you to plead guilty?

22 THE DEFENDANT: No.

23 THE COURT: Are you pleading guilty because of your
24 own free will?

25 THE DEFENDANT: Yes.

1 THE COURT: All right. Did anyone tell you what to
2 say today or put words in your mouth?

3 THE DEFENDANT: No.

4 THE COURT: All right. Do you understand that by
5 pleading guilty today you're going to be adjudged guilty and
6 you could be relinquishing, you know, potential civil rights
7 such as the right to vote or things of that nature, do you
8 understand that?

9 THE DEFENDANT: Uh, would that be upon conviction or
10 even if --

11 THE COURT: Upon conviction. And I'm not even sure
12 it would apply to a misdemeanor, but I just wanted to make
13 you aware that it's a possibility.

14 THE DEFENDANT: I guess so, right? Yes --

15 MR. McGOVERN: Yes, sir.

16 THE DEFENDANT: -- yes, sir.

17 THE COURT: Now, let me ask you something else also.
18 I don't know what effect, if any, a guilty plea will have on
19 your ability to get your job back at Boeing. Now, have you
20 contemplated that? Do you understand that there's a
21 possibility that, by being found guilty of this offense, it
22 could impact whether they rehire you?

23 THE DEFENDANT: Sure, I understand.

24 THE COURT: And I don't know that one way or the
25 other, but I just want you to be aware that that's a

1 possibility.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. All right. Have you ever been on
4 any supervision or probation or pretrial release before?

5 THE DEFENDANT: No.

6 THE COURT: Okay. And my understanding, Ms. Taylor,
7 the maximum penalties that Mr. Lees faces...

8 MS. TAYLOR: It's a maximum of one year in prison, a
9 maximum of one year of supervised release, a \$1,000 fine and
10 a \$100 special assessment.

11 THE COURT: Okay. So that's the maximum of what you
12 could receive if you plead guilty; I'm not saying that's what
13 you'll get, but that's as -- I couldn't sentence you to any
14 more than that.

15 THE DEFENDANT: Yes.

16 THE COURT: Do you understand that?

17 THE DEFENDANT: I do.

18 THE COURT: Okay. Do you understand that your
19 offense is covered by something called the Sentencing
20 Guidelines and I'm required to consider those Guidelines in
21 imposing sentence, but I could depart from those, either go
22 higher than the Guidelines if the Government asked me or
23 lower than the Guidelines if you asked me; do you understand
24 that?

25 THE DEFENDANT: Yes.

1 THE COURT: I don't know what the Guidelines are
2 going to be in your case --

3 THE DEFENDANT: Well, she --

4 MR. McGOVERN: Your Honor --

5 THE DEFENDANT: Sorry.

6 MR. McGOVERN: -- I think they're -- preliminarily,
7 I think they're in -- the zero-to-six-month range is the
8 Guideline.

9 THE COURT: Okay, that's -- that's I think what the
10 lawyers believe them to be, but we won't know for sure until
11 after the Probation Officer prepares what's called a
12 presentence report and does all the calculations, and then
13 you and Ms. Taylor will both have a chance to object or raise
14 issues with those calculations. Okay?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you understand that if you disagree
17 with the report from the Probation Office your guilty plea is
18 still binding on you? So let's say, for example, that the
19 Probation Officer says the Guidelines are higher than zero to
20 six months in prison, you can't then say I'm rescinding my
21 guilty plea, I want to go to trial.

22 THE DEFENDANT: Right, gotcha.

23 THE COURT: Okay?

24 THE DEFENDANT: Yes.

25 THE COURT: All right. Now, you can contest things,

1 you can file objections and we will have a hearing in court.
2 Mr. McGovern is very experienced in this area and he can make
3 objections, but I'll have to rule on those objections and you
4 can't change your mind about pleading guilty simply because
5 you don't like the rulings I make.

6 THE DEFENDANT: Yes, I follow that.

7 THE COURT: Okay.

8 THE DEFENDANT: Thank you.

9 THE COURT: Do you understand that your attorney and
10 the Government can agree on the facts, you may file
11 stipulations or make recommendations, but that I'm not bound
12 by what they say?

13 THE DEFENDANT: Yes.

14 THE COURT: Okay. And that your plea is still
15 binding on you whether I agree or not with the facts that
16 they believe I should find?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay. Do you understand that if you're
19 sentenced to a term of imprisonment, there's no more parole
20 and you would have to serve the entire term of imprisonment?

21 THE DEFENDANT: Yes.

22 THE COURT: Okay. Do you understand that you can
23 appeal your sentence to a higher court, which can modify or
24 set aside the sentence or order me to resentence you, and the
25 Government could also appeal?

1 THE DEFENDANT: Yes.

2 THE COURT: So, under the plea agreement that you're
3 entering, both of you are retaining all of your appellate
4 rights?

5 THE DEFENDANT: Yeah.

6 THE COURT: Okay?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Now, I'm going to go over -- did Mr.
9 Lees sign an Acknowledgment of Rights form?

10 MR. McGOVERN: I don't think we have, your Honor.

11 THE COURT: All right. Let me go over some
12 constitutional rights that you're giving up by pleading
13 guilty. All right?

14 THE DEFENDANT: Yes.

15 THE COURT: And I just want to make sure you
16 understand them all.

17 First, you're presumed innocent. As you sit here
18 today in this courtroom, everyone in our society, including
19 me, presumes that you're innocent. By pleading guilty,
20 you're giving up that presumption of innocence and you're
21 admitting your guilt. Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: All right. Do you also understand that
24 you have a right to the assistance of a lawyer at every stage
25 of the proceeding, including before trial, during trial and

1 after trial, and for any appeals to any higher courts after I
2 sentence you? And, if you can't afford a lawyer, one will be
3 appointed for you free of charge. All right.

4 Do you understand that you have a right to plead not
5 guilty and persist in that plea and have your case tried by a
6 jury of 12 people or by a judge sitting alone?

7 THE DEFENDANT: Yes.

8 THE COURT: And, by pleading guilty, you're giving
9 up the right to a jury trial?

10 THE DEFENDANT: Yeah.

11 THE COURT: And I also wanted to ask you, do you
12 understand you have a right to have your case heard by a
13 District Court Judge, I'm a Magistrate Judge. So you could
14 have a District Court Judge hear your plea or hear your trial
15 and you don't have to agree to proceed before me. By
16 pleading guilty today, you're agreeing to have me handle your
17 case.

18 THE DEFENDANT: Okay, yes.

19 THE COURT: Okay?

20 MR. McGOVERN: Your Honor, for the record, we have
21 filed a consent to proceed before your Honor as well, my
22 client is aware of that.

23 THE COURT: Okay, thank you.

24 Do you understand you have a right to have a jury of
25 your peers drawn from the residents of this district and Mr.

1 McGovern would help you in selecting a jury --

2 THE DEFENDANT: Yes.

3 THE COURT: -- and, by pleading guilty, you're
4 giving up that right?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand that in order to find
7 you guilty a jury would have to be unanimous, that is all 12
8 jurors would have to agree that the Government has proven
9 each and every element of the offense charged beyond a
10 reasonable doubt, which is the highest burden in the law, and
11 you're giving up your right to have a jury -- a unanimous
12 jury verdict?

13 THE DEFENDANT: Yes.

14 THE COURT: All right. Do you understand that you
15 could obtain a subpoena or court order to make witnesses come
16 to court and testify on your behalf?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you understand that if you're found
19 guilty you could appeal such a finding of guilt to a higher
20 court, which could set aside or modify the finding of guilt,
21 or order that I give you a new trial?

22 THE DEFENDANT: Yes.

23 THE COURT: And, by pleading guilty, you won't be
24 able to contest your guilt to a higher court.

25 Do you understand that at a trial you would have the

1 right to confront and cross-examine witnesses? That is,
2 you'd have the right to sit here and face your accuser, and
3 have Mr. McGovern cross-examine him or her and challenge
4 their version of what you did and, by pleading guilty, you're
5 giving that up?

6 THE DEFENDANT: Understood.

7 THE COURT: Okay. Do you understand that at a trial
8 you don't have to testify or take the witness if you don't
9 want to?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand that no one can force
12 you to do that and if you didn't take the witness stand Ms.
13 Taylor, the prosecutor, could not comment on that or ask the
14 jury to draw a negative inference from your failure to
15 testify?

16 THE DEFENDANT: Okay.

17 THE COURT: All right?

18 THE DEFENDANT: Mm-hmm.

19 THE COURT: Do you understand that by entering this
20 guilty plea there will be no trial and you're giving up all
21 the rights that I just told you about in admitting that you
22 are in fact guilty of this offense?

23 THE DEFENDANT: Yes.

24 THE COURT: All right. Now, in order to prove you
25 guilty, the Government would have to prove that you violated

1 Title 21 of the United States Code Section 846, which is
2 attempted possession of Oxycodone. And there's two things
3 they have to prove and I want you to listen very carefully,
4 I'm going to go over them with you. First is they would have
5 to prove that you intended to commit the crime of illegally
6 possessing a controlled substance, in this case a mixture or
7 substance containing a detectable amount of Oxycodone; and,
8 second, that thereafter you did some act constituting a
9 substantial step towards the commission of that crime which
10 strongly corroborates your criminal intent. So that's what
11 they would have to -- the legal test they would have to meet
12 to convict you.

13 Now, what I'm going to do now is I'm going to ask
14 Ms. Taylor to summarize the evidence the Government would
15 offer against you. And I want you to listen carefully
16 because I'm going to ask you if you did everything she said
17 and, if you didn't do what she says, then I want you to tell
18 me, because you shouldn't be pleading guilty. All right?
19 So, if she says something that you think is wrong, you need
20 to speak to Mr. McGovern and tell me that, because I don't
21 want you to admit to anything you didn't do. Okay?

22 THE DEFENDANT: Okay.

23 THE COURT: All right. Go ahead, Ms. Taylor.

24 MS. TAYLOR: Thank you, your Honor.

25 If this case were to proceed to trial, the

1 Government would introduce evidence through witnesses and
2 documentary exhibits which would establish the following
3 facts: On September 9th, 2011, the Defendant did meet with
4 an individual cooperating with the Government outside the
5 Boeing Federal Credit Union on the Boeing Company's Ridley
6 Park, Pennsylvania campus. There the Defendant did buy five
7 placebo Oxycontin 40 milligram tablets from the cooperating
8 individual for \$100.

9 THE COURT: All right. And do you fully admit, Mr.
10 Lees, that you did all the things Ms. Taylor says?

11 THE DEFENDANT: Excuse me, Judge.

12 THE COURT: Yeah, sure.

13 (Discussion held off the record.)

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. Is that in fact what you did?

16 THE DEFENDANT: Yep.

17 THE COURT: Okay. Any problems with it?

18 THE DEFENDANT: No.

19 THE COURT: Okay. All right. You now want to
20 change your plea to guilty?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. Because previously you've pleaded
23 not guilty?

24 MR. McGOVERN: Yes, your Honor, that was at the
25 first listing, yes.

1 THE COURT: At the arraignment. All right, if you
2 could please stand, sir, we'll accept your guilty plea.

3 THE DEPUTY CLERK: Thomas Alfred Lees, you've been
4 charged in Information Number 11-576, violation of 21 U.S.C.
5 Section 846, attempted possession of Oxycodone; how do you
6 plead, guilty or not guilty?

7 THE DEFENDANT: Guilty.

8 THE DEPUTY CLERK: Okay, thank you.

9 THE COURT: All right, sir, you can be seated.
10 Thank you.

11 THE DEFENDANT: Thank you.

12 THE COURT: I accept your guilty plea and I'm going
13 to make the following findings: I'm going to find that
14 you're fully alert, competent and capable of entering an
15 informed plea; that your plea is knowing and voluntary and
16 it's supposed by an independent basis in fact containing each
17 of the essential elements of the offense charged; and that
18 your plea of guilty is therefore accepted and you're now
19 adjudged guilty of the offense charged in the information.

20 I'm going to prepare -- have the Probation Office
21 prepare a presentence report. What I'd like you to do is
22 cooperate with them, because they're going to prepare a
23 report for me that gives me a fuller picture of your life and
24 your situation, because we've just met. And so I'm going to
25 have to impose sentence and, in order to help me do that, I

1 need to get information about your background, your family --
2 is that your wife with you?

3 THE DEFENDANT: Yes, Teresa.

4 THE COURT: All right.

5 MR. McGOVERN: And this Teresa Lees right behind me.

6 THE COURT: Thanks for coming, ma'am.

7 MRS. LEES: Thank you.

8 THE COURT: And so I need a fuller picture of you.

9 So Mr. McGovern can be with you when the Probation Officer
10 speaks to you, but they're going to be gathering all this
11 information. You're probably wondering why do they have to
12 know all this, but it helps me get a fuller understanding of
13 what your life has been like and what you've facing. All
14 right?

15 If you have any objections to the report that they
16 file -- you'll be able to read it -- I want you to sit down
17 with the Probation Officer and with Mr. McGovern and try to
18 resolve the objections. And, if not, you can make the
19 objections with me and I'll rule on them. And the Government
20 will also be able to make any objections they deem
21 appropriate to the Court.

22 THE DEFENDANT: Okay.

23 THE COURT: Now, I got a report from Pretrial
24 Services saying that you've been doing wonderfully while
25 you're on pretrial release. So you got a good report card

1 from them.

2 THE DEFENDANT: Good.

3 THE COURT: All right? And, unless there's an
4 objection, I'll continue the bail conditions that were set by
5 Judge Rufe.

6 MS. TAYLOR: No objection.

7 MR. McGOVERN: Thank you.

8 THE DEFENDANT: Thank you.

9 THE COURT: All right. Now, I do want to ask you,
10 are you getting all the assistance you need? Like, for
11 example, is there any counseling or treatment or things like
12 that that you believe Pretrial Services could be giving?
13 Because I'll order it, if you want me to.

14 THE DEFENDANT: No, Teresa and I seem to be fine,
15 pretty stable, considering the downside of the without the
16 job and things. But we're fine, thank you.

17 THE COURT: Okay. Are you working?

18 THE DEFENDANT: Not -- no.

19 THE COURT: Okay.

20 THE DEFENDANT: Not right now.

21 THE COURT: Okay. Now, are you getting any medical
22 assist --

23 THE DEFENDANT: Fortunately, Boeing -- sorry, excuse
24 me. Fortunately, Boeing has retained us on the insurance
25 rolls, we're lucky to have the insurance still. And that

1 brings up a point you said of -- well, I guess it's old news
2 now, but we're innocent until proven guilty, on the innocent
3 plea they were keeping us in insurance, but will this -- do
4 you think this will change their --

5 THE COURT: You know, I don't know, I can't -- I
6 don't know what their policy is.

7 MR. McGOVERN: I'll have to follow up with Boeing
8 and try to find out.

9 THE COURT: Yeah --

10 THE DEFENDANT: Yeah.

11 THE COURT: -- exactly.

12 THE DEFENDANT: Okay. But, sir, thank you for the
13 offer and things, Judge Rice. We seem to be stable and we're
14 doing pretty good. Thank you.

15 THE COURT: Okay. Because if you need any
16 assistance, because I know some people have struggled with
17 this --

18 THE DEFENDANT: Oh, I feel very low at times with
19 this -- you know, the whole -- your livelihood, your job for
20 26 years, and it is a daily struggle.

21 THE COURT: Right.

22 THE DEFENDANT: Yeah.

23 THE COURT: But even with the addiction to
24 Oxycodone.

25 MR. McGOVERN: Well, my client didn't have an

1 addiction to Oxycodone.

2 THE COURT: Okay. All right.

3 MR. McGOVERN: He just attempted to buy five pills
4 that day --

5 THE COURT: Okay.

6 MR. McGOVERN: -- but there was no addiction.

7 THE COURT: All right. Well, most people that buy
8 the pills usually --

9 MR. McGOVERN: Yeah, well, it wasn't -- I've been
10 working with my client for some time and it was a bad day.

11 THE COURT: Okay.

12 MR. McGOVERN: Literally.

13 THE COURT: Okay. All right, good. So you -- I
14 know a lot of your colleagues have had some issues struggling
15 with treatment and things like that.

16 THE DEFENDANT: Wow, I wouldn't doubt it.

17 THE COURT: Yes.

18 THE DEFENDANT: It's very depressing lately, but --

19 THE COURT: Okay. So it sounds like you've got
20 everything under control.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And I'm sure your wife has a long list
23 of things she needs you to do around the house.

24 (Laughter.)

25 THE DEFENDANT: Oh, yeah.

1 THE COURT: Now, I believe -- we've checked this
2 date with Mr. McGovern and Ms. Taylor -- November 1st for
3 sentencing at 10:00 a.m.?

4 MR. McGOVERN: I believe that was the date.

5 (Pause.)

6 MR. McGOVERN: Yes --

7 THE COURT: Okay.

8 MR. McGOVERN: -- your Honor, that was the date.

9 THE COURT: Does that date work for you and your
10 wife, Mr. Lees?

11 THE DEFENDANT: This coming November 1st?

12 THE COURT: Yes.

13 THE DEFENDANT: I don't think there's anything on
14 the calendar, I'm sure, yeah.

15 THE COURT: Okay.

16 THE DEFENDANT: That would be fine.

17 THE COURT: Okay, excellent. So I'll see you
18 November 1st. And before we do the sentencing we'll address
19 the motion and I'll have the Government prepare -- Ms.
20 Taylor, could you tell Ms. Lunkenheimer and Ms. Taylor to be
21 prepared to present any testimony they have against Mr. Lees
22 at the time of sentencing?

23 MS. TAYLOR: Yes, your Honor.

24 THE COURT: Unless you guys work something out. If
25 you need more time, we can do it on a different day before

1 November 1st.

2 MR. McGOVERN: Okay.

3 THE COURT: So if you and Ms. Lunkenheimer decide
4 you want to --

5 MR. McGOVERN: I'll speak to Ms. Taylor and Faithe
6 Moore Taylor --

7 THE COURT: Great.

8 MR. McGOVERN: -- and Ashley and we'll see if we can
9 get that resolved.

10 THE COURT: If any of you -- we're having a hearing
11 tomorrow in Courtroom 16B at 9:30, if you want to attend, Mr.
12 Lees, you're welcome to, just to -- otherwise we'll get you a
13 transcript of the proceeding.

14 MR. McGOVERN: Thank you, your Honor. I'll just
15 make a note of that. That will be 16B --

16 THE COURT: 16B.

17 MR. McGOVERN: -- at 9:30 tomorrow?

18 THE COURT: Yes.

19 THE DEFENDANT: And this is where the group of --
20 the group of the Boeing guys, you said?

21 THE COURT: Yeah, all the Boeing guys who have filed
22 similar motions that you're going to be filing seeking pre --
23 what do you call it, prejudgment --

24 MR. McGOVERN: Prejudgment -- prejudgment probation.

25 THE COURT: Prejudgment probation, they're going to

1 be presenting evidence about whether that provision should be
2 applied to your cases.

3 MR. McGOVERN: And as we can tell by the topic, it's
4 something that's kind of unusual. But it's there for a
5 reason, so I think that's why we're pursuing it.

6 THE COURT: Okay, excellent.

7 THE DEFENDANT: I have one other --

8 THE COURT: Anything else?

9 THE DEFENDANT: -- one other question.

10 THE COURT: Yes? You can be seated.

11 THE DEFENDANT: Sorry, sorry.

12 (Discussion held off the record.)

13 MR. McGOVERN: My client was asking, he should
14 continue with Pretrial Services --

15 THE COURT: Yes.

16 MR. McGOVERN: -- during this? Yes.

17 THE DEFENDANT: Okay.

18 THE COURT: Definitely.

19 THE DEFENDANT: All right, thanks.

20 THE COURT: Definitely. And you have a great
21 performance record with them, so keep that up.

22 THE DEFENDANT: All right, thank you.

23 THE COURT: Okay. Anything else?

24 MS. TAYLOR: No, your Honor.

25 THE COURT: All right. It's good to see all of you.

1 Mr. McGovern, great to see you again.

2 MR. McGOVERN: Great to see you too, your Honor.

3 Thank you.

4 THE COURT: Good to see you, Mr. Lees. Mrs. Lees,
5 thank you for coming.

6 MS. TAYLOR: Thank you, your Honor.

7 THE COURT: All right. Thank you.

8 MR. McGOVERN: Have a great day, your Honor.

9 THE COURT: All right, you too.

10 (Hearing adjourned at 11:23 o'clock a.m.)

11 * * *

CERTIFICATION

I hereby certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

s:/Geraldine C. Laws, CET
Laws Transcription Service

Dated 10/3/12